

United States District Court  
Southern District of Texas  
FILED

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

APR - 9 2009

Michael N. Milby, Clerk

\_\_\_\_\_  
No. 09-20046  
\_\_\_\_\_

U.S. COURT OF APPEALS  
FILED

APR 13 2009

IN RE: RICHARD DELANEY KYLES

CHARLES R. FULBRUGE III  
CLERK

Movant

\_\_\_\_\_  
Motion for an order authorizing  
the United States District Court for the Southern  
District of Texas to consider  
a successive 28 U.S.C. § 2254 application  
\_\_\_\_\_

Before BARKSDALE, DENNIS, and ELROD, Circuit Judges.

PER CURIAM:

Richard Delaney Kyles, Texas prisoner # 257935, seeks authorization to file a successive 28 U.S.C. § 2254 application challenging the 2007 denial of parole by the Texas Board of Pardon and Paroles (TBPP). Kyles argues that the retroactive application of new, stricter parole laws than those in effect at the time he committed the underlying offense to his 2007 parole review violates the Ex Post Facto Clause and the Equal Protection Clause. Kyles was sentenced to life in prison following a 1976 conviction for capital murder.

An application is successive when it raises a claim challenging the applicant's conviction or sentence that was or could have been raised in a prior application or that otherwise constitutes an abuse of the writ. *In re Cain*, 137 F.3d 234, 235 (5th Cir. 1998). In the instant motion, Kyles complains about actions taken by the TBPP in 2007. Thus, Kyles could not have brought those

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claims in his earlier § 2254 application that was filed in 2006 “because those claims had not yet arisen.” *Crone v. Cockrell*, 324 F.3d 833, 837 (5th Cir. 2003).

Because the factual predicate for Kyles’s present parole-related claims occurred in 2007, after his earlier § 2254 application was filed, his proposed application is not successive. *See Cain*, 137 F.3d at 235-36. Therefore, Kyles is not required to obtain this court’s authorization in order to proceed with his proposed application. IT IS ORDERED that Kyles’s motion for authorization to file a successive application is DENIED as unnecessary.

A true copy

Attest:

Clerk, U. S. Court of Appeals, Fifth Circuit

By 

Deputy

New Orleans, Louisiana

***United States Court of Appeals***

**FIFTH CIRCUIT  
OFFICE OF THE CLERK**

**CHARLES R. FULBRUGE III  
CLERK**

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April 01, 2009

**MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:**

No. 09-20046 In Re: Kyles  
USDC No.

United States District Court  
Southern District of Texas

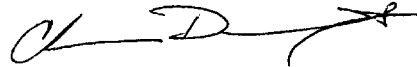
APR 09 2009

Enclosed is an order entered in this case.

Michael N. Milby, Clerk

Sincerely,

CHARLES R. FULBRUGE III, Clerk



By: \_\_\_\_\_  
Chris P. Descant, Deputy Clerk  
504-310-7704

Mr. Richard Delaney Kyles  
Mr. Michael Milby

Form Name: Motion Notice - MOT2 (!npman)